

35
T5198 GREAT RIFT LANDS

5/7/02
Don

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUL 29 1998

Department of Water Resources
Eastern Region

TRANSFER OF WATER RIGHT

AMENDED

TRANSFER NO. 5198

AMENDED

WATER RIGHT NO(S). 35-07246G/35-07959B/35-07960B/35-07965B
35-07968B/35-08660B

This is to certify that: GREAT RIFT LANDS
C/O LANCE FUNK
PO BOX 360
AMERICAN FALLS ID 83211

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 35-07246G : IRRIGATION Priority: 09/05/1972	04/01 to 10/31	2.80 CFS	900.0 AF
Right No. 35-07959B : IRRIGATION Priority: 03/18/1981	04/01 to 10/31	1.20 CFS	240.0 AF
Right No. 35-07960B : IRRIGATION Priority: 03/18/1981	04/01 to 10/31	1.57 CFS	424.0 AF
Right No. 35-07965B : IRRIGATION Priority: 03/23/1981	04/01 to 10/31	0.52 CFS	160.0 AF
Right No. 35-07968B : IRRIGATION Priority: 03/23/1981	04/01 to 10/31	1.03 CFS	252.0 AF
Right No. 35-08660B : IRRIGATION Priority: 10/26/1987	04/01 to 10/31	* 0.84 CFS	272.0 AF
	SUBTOTAL:	* 1.28 CFS	524.0 AF
	TOTAL:	** 7.37 CFS	** 2248.0 AF

TRANSFER NO. 5198
WATER RIGHT NO(S). 35-07246G/35-07959B/35-07960B/35-07965B
35-07968B/35-08660B

SOURCE

GROUNDWATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
<u>LOCATION OF POINT(S) OF DIVERSION:</u>			
		NENW , Sec. 11, Township 06S, Range 29E	
		SESW , Sec. 11, Township 06S, Range 29E	
		POWER County	

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S 29E 2	NESW 39	SWSW 40	SESW 39	118
11	NENW 39	NWNW 37	SWNW 37	
	SESW 35	NESW 34	NWSW 36	
	SWSW 32	SESW 35	NESE 40	
	NWSE 40	SWSE 40	SESE 39	444
Total number of acres irrigated:				** 562

CONDITIONS OF APPROVAL AND REMARKS

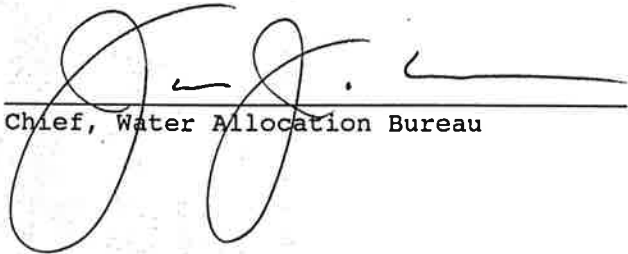
1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
- * 7. Right 35-08660B when combined with Right 35-07968B shall not exceed a total diversion rate of 1.28 cfs.
- ** 8. The total instantaneous diversion of water from all points of diversion under Transfer 5198 shall not exceed 7.37 cfs, nor a total combined annual volume of 2248.0 af.
- *** 9. Right 35-07246G is limited to the irrigation of 225.0 acres in the place of use described above in a single irrigation season.
- *** 10. Right 35-07959B is limited to the irrigation of 60.0 acres in the place of use described above in a single irrigation season.

TRANSFER NO. 5198
WATER RIGHT NO(S). 35-07246G/35-07959B/35-07960B/35-07965B
35-07968B/35-08660B

CONDITIONS OF APPROVAL AND REMARKS

- *** 11. Right 35-07960B is limited to the irrigation of 106.0 acres in the place of use described above in a single irrigation season.
- *** 12. Right 35-07965B is limited to the irrigation of 40.0 acres in the place of use described above in a single irrigation season.
- *** 13. Right 35-07968B is limited to the irrigation of 63.0 acres in the place of use described above in a single irrigation season.
- *** 14. Right 35-08660B is limited to the irrigation of 68.0 acres in the place of use described above in a single irrigation season.
- 15. Right 35-08660B is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
- 16. Diversion and use of water under Right 35-08660B is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
- 17. The Director retains jurisdiction of Right 35-08660B and may change, add or remove any requirement as determined to be appropriate.

Dated this 15TH day of July, 1988.


for Chief, Water Allocation Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5198
WATER RIGHT NO(S). 35-07246G/35-07959B/35-07960B/35-07965B
35-07968B/35-08660B

Eastern
RECEIVED
JUN 24 1998

Department of Water Resources
Eastern Region

This is to certify that: **GREAT RIFT LANDS**
C/O LANCE FUNK
PO BOX 360
AMERICAN FALLS ID 83211

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 35-07246G :			
IRRIGATION	04/01 to 10/31	2.80 CFS	900.0 AF
Priority: 09/05/1972			
Right No. 35-07959B :			
IRRIGATION	04/01 to 10/31	1.20 CFS	240.0 AF
Priority: 03/18/1981			
Right No. 35-07960B :			
IRRIGATION	04/01 to 10/31	1.57 CFS	424.0 AF
Priority: 03/18/1981			
Right No. 35-07965B :			
IRRIGATION	04/01 to 10/31	0.52 CFS	160.0 AF
Priority: 03/23/1981			
Right No. 35-07968B :			
IRRIGATION	04/01 to 10/31	1.03 CFS	252.0 AF
Priority: 03/23/1981			
Right No. 35-08660B :			
IRRIGATION	04/01 to 10/31	* 0.84 CFS	272.0 AF
Priority: 10/26/1987			
	SUBTOTAL:	* 1.28 CFS	524.0 AF
	TOTAL:	** 7.37 CFS	** 2248.0 AF

TRANSFER NO. 5198
 WATER RIGHT NO(S). 35-07246G/35-07959B/35-07960B/35-07965B
 35-07968B/35-08660B

SOURCE

GROUNDWATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
<u>LOCATION OF POINT(S) OF DIVERSION:</u>			
		NENW , Sec. 11, Township 06S, Range 29E	
		SESW , Sec. 11, Township 06S, Range 29E	
		POWER County	

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S 29E 2	NESW 39	SWSW 40	SESW 39	118
11	NENW 39	NWNW 37	SWNW 37	
	SESW 35	NESW 34	NWSW 36	
	SWSW 32	SESW 35	NESE 40	
	NWSE 40	SWSE 40	SESE 39	444
Total number of acres irrigated:				** 562

CONDITIONS OF APPROVAL AND REMARKS

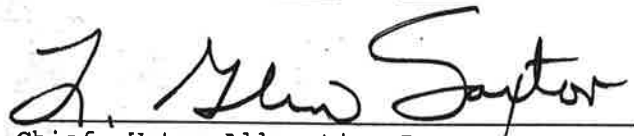
1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
- * 7. Right 35-08660B when combined with Right 35-07968B shall not exceed a total diversion rate of 1.28 cfs.
- ** 8. The total instantaneous diversion of water from all points of diversion under Transfer 5198 shall not exceed 7.37 cfs, nor a total combined annual volume of 2248.0 af.
- *** 9. Right 35-07246G is limited to the irrigation of 225.0 acres in the place of use described above in a single irrigation season.
- *** 10. Right 35-07959B is limited to the irrigation of 60.0 acres in the place of use described above in a single irrigation season.

TRANSFER NO. 5198
WATER RIGHT NO(S). 35-07246G/35-07959B/35-07960B/35-07965B
35-07968B/35-08660B

CONDITIONS OF APPROVAL AND REMARKS

- *** 11. Right 35-07960B is limited to the irrigation of 106.0 acres in the place of use described above in a single irrigation season.
- *** 12. Right 35-07965B is limited to the irrigation of 160.0 acres in the place of use described above in a single irrigation season.
- *** 13. Right 35-07968B is limited to the irrigation of 63.0 acres in the place of use described above in a single irrigation season.
- *** 14. Right 35-08660B is limited to the irrigation of 68.0 acres in the place of use described above in a single irrigation season.
- 15. Right 35-08660B is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
- 16. Diversion and use of water under Right 35-08660B is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
- 17. The Director retains jurisdiction of Right 35-08660B and may change, add or remove any requirement as determined to be appropriate.

Dated this 12th day of June, 1998.


Chief, Water Allocation Bureau

MEMORANDUM

TO: Files 35-07246A, 35-07959, 35-07960, 35-07965, 35-07968 & 35-08660

FROM: Pam Skaggs/State Office

SUBJECT: Transfer 5198

DATE: June 1, 1998

Transfer 5198 adds & changes the point of diversion and changes the place of use under a portion of Rights 35-07246A (splitting the right into Parts F and G), 35-07959, 35-07960, 35-07968 and 35-08660 (splitting each right into Parts A and B).

These rights are combined to create a combined system with a 562.0 acre permissible place of use. Season of use and diversion volume were adjusted to current standards. Recommended conditions include drilling permit requirements, measuring & annual reporting, irrigation overlap, combined right limits, permissible place of use, trust water conditions for Right 35-08660B, and standard transfer conditions.

*5/6/02 PD's issued 1/31/02 FOR: 35-7246G, 7959B, 7960B,
7965B, 7968B.*

No SRBA claim FOR: 35-8660B.

ALL ABOVE PD'S CONFORM TO SRBA AS V1 & Anc View

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 5198

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT

MAR 19 1998

PART 1

Name of applicant Great Rift Lands C/O Lance Funk208-221-1205 - mobil
Phone 208-226-5207 - shopPost Office address PO Box 360 American Falls ID 83211

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes To transfer part of the rights to new irrigated acreage

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-08660 B	10/26/1987	0.25/272	Irrigation	4/01 to 11/01
35-07965 B	3/23/1981	0.52/140	Irrigation	4/01 to 11/01
35-07968 B	3/23/1981	1.03/221	Irrigation	4/01 to 11/01
35-07960 B	3/18/1981	1.57/371	Irrigation	4/01 to 11/01
35-07959 B	3/18/1981	1.20/210	Irrigation	4/01 to 11/01
35-07246 B	9/5/1972	2.80/900	Irrigation	4/01 to 11/01

2. Total amount of water being transferred 7.37 cubic feet per second and/or 2114 acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NE	NE	NW	11	6S	29E	Power	New Well #1
	SE	SE	SW	11	6S	29E	Power	New Well #2

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	2									39		40	39					118
		11					39	37	37	35	34	36	32	35	40	40	40	39	444

Total acres 562

PART 1

6. General Information:

a. Description of diversion system Two new wells with mainline to two full center pivots and one 3/4 pivot. Wells to be interconnected.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Formerly irrigated lands at original place of use will no longer be irrigated. Fields formerly irrigated with side roll and hand lines are now irrigated with center pivots.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 35-07246A issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 09/05/1972

5. Water is used for the following purpose:

amount 3.7 for irrigation purposes from 04/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.7 cubic feet per second and/or 1188 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	34	04S	30E	Bingham	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
✓ 04S	30E	34	38	39	39	34									38	40	38	31	297

Total acres 297

9. Describe any other water rights used for the same purpose as described above NA

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
no If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

32-07246 J

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 2.8 for irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	34	04S	30E	Bingham	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
04S	30E	34	29	30	30	25									29	31	29	22	225

Total acres 225

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

32-07246 H

1. amount 0.90 for irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	34	04S	30E	Bingham	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
04S	30E	34	9	9	9	9									9	9	9	9	72

Total acres 72

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 35-07959 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 03/18/1981

5. Water is used for the following purpose:

amount 6.18 for irrigation purposes from 04/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 6.18 cubic feet per second and/or 1081.5 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	22	06S	29E	Power	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	29E	22	38	39	40	39									36	40	39	38	309

Total acres 309

9. Describe any other water rights used for the same purpose as described above _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 no _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.20 for irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	22	06S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	29E	22	6	7	8	11									4	8	10	6	60

Total acres 60

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 4.98 for irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	22	06S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	29E	22	32	32	32	28									32	32	29	32	249

Total acres 249

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 35-07965 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 03/23/1981

5. Water is used for the following purpose:

amount 4.06 for irrigation purposes from 04/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 4.06 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	23	06S	29E	Power	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	29E	23																	
		26	39	40	39	39									39	39	40	39	157
																			157

Total acres 314

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. 5198

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 no If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.52 for irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	23	06S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	29E	23													10	6	4	4	24
		26	4		6	6													16

Total acres 40

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 3.54 for irrigation purposes from 04/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SW	23	06S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	29E	23													29	33	36	35	133
		26	35	40	33	33													141

Total acres 274

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 35-07960 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 3/18/1981

5. Water is used for the following purpose:

amount 7.01 for Irrigation purposes from 4/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 7.01 cubic feet per second and/or 1652 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SE	22	6S	29E	Power	
		SE	SW	23	6S	29E	Power	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	23					40	39	39	40	40	39	39	39					315
		26					39	39	39	40									157

Total acres 472

9. Describe any other water rights used for the same purpose as described above NA

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.57 for Irrigation purposes from 4/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SE	22	6S	29E	Power	
		SE	SW	23	6S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	23					12	11	8	12	7	7	7	7					71
		26					7	7	14	7									35

Total acres 106

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 5.44 for Irrigation purposes from 4/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SE	22	6S	29E	Power	
		SE	SW	23	6S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	23					28	28	31	28	33	32	32	32					244
		26					32	32	25	33									122

Total acres 366

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 35-07968 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 3/23/1981

5. Water is used for the following purpose:

amount 5.09 for Irrigation purposes from 4/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 5.09 cubic feet per second and/or 1092 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	1	6S	29E	Power	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
✓ 6S	29E	1									40	39	38	39	39	40	39	38	312

Total acres 312

9. Describe any other water rights used for the same purpose as described above NA

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.03 for Irrigation purposes from 4/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	1	6S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	1									8	9	6	7	9	11	6	7	63

Total acres 63

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 4.06 for Irrigation purposes from 4/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	1	6S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	1									32	30	32	32	30	29	32	32	249

Total acres 249

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 35-08660 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 10/26/1987

5. Water is used for the following purpose:

amount * 1.77 for Irrigation purposes from 4/01 to 11/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right * 1.77 cubic feet per second and/or 574 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	1	6S	29E	Power	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	2														26.5	39	39	104.5
		11	39																39

Total acres 143.5

9. Describe any other water rights used for the same purpose as described above NA

* combined rate of diversion with license 35-07968 is 5.61 cfs (only 0.52 cfs available for 35-08660)

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.25 for Irrigation purposes from 4/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	2	6S	29E	Power	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	2														13	8	8	29
		11	39																39

Total acres 68**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT** (omit if there is no change)

1. amount 0.27 for Irrigation purposes from 4/01 to 11/01
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	2	6S	29E	Power	

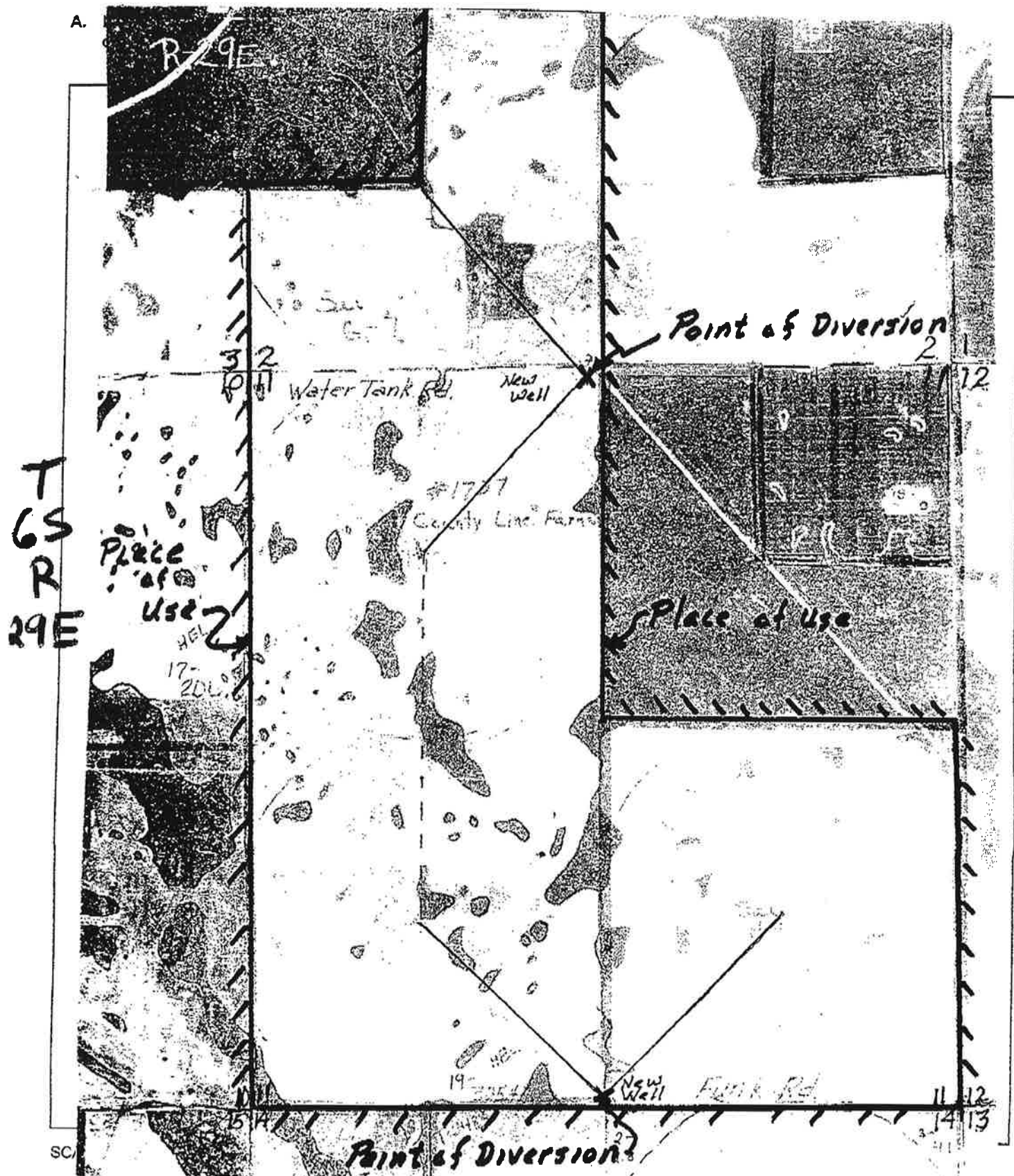
3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	29E	2														13.5	31	31	75.5

Total acres 75.5

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3



PART 3**B. CHANGES IN NATURE OF USE**

1. New Nature of Use Amount Hours/days/year Period of Use
 (cfs/ac-ft) _____ to _____
 _____ to _____
2. Quantity and quality of return flows and location of discharge:
No runoff or return flow from sprinkler irrigation to streams will occur
3. Describe the effects on other water uses resulting from the proposed change:
None

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



Subscribed and sworn to before me this

27th

day of

(Signature of Applicant)

January

19 98

My commission expires

WM

6/23/2000

Wendy J. Murphy
 (Notary Public)

FOR DEPARTMENT USE ONLY

Transfer contains 16 pages and _____ attachments

Received by HWT Date 1-27-98

Protest filed by _____

Prelim. check by _____ Fee \$100.00

Receipted by HWT #EC23855 Date 1-27-98

Published in Power County Press

Copies of protest forwarded by _____

Pub. dates Feb. 12 & 19, 98

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☒ Approval ☐ Denial

rec'd.

by RK

Copy of transfer sent to lien holder _____

September 21, 1999

RECEIVED

SEP 24 1999

Department of Water Resources
Eastern Region

Copies forwarded to:

IDWR NORTHERN - Bob Haynes

IDWR SOUTHERN - Allen Merritt

IDWR EASTERN - Ron Carlson / Skip Jones

IDWR WESTERN - Gary Spackman

SALMON OFFICE - Bob Foster

Legal Division - Phil Rassier

Adjudication Bureau - Dave Tuthill

Information Officer - Dick Larsen

Water Allocation Bureau - Glen Saxton

Water Distribution Section - Tim Luke

Water Permits Section - Jeff Peppersack / Shelley Keen

PLEASE ROUTE:

Darla Block
Sharla Curtis
Burke Scholer
Kay Walker

Cindy Hodges
Pam Skaggs
Kari Lynn Townsend



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

September 21, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER

DIRECTOR

RE: In the Matter of Application for Transfer No. 5197 in the name of F.F. Gunning and G.C. Gunning

Dear Interested Parties:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Southern Region

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5197 IN THE)
NAME OF F. F. GUNNING AND)
G. C. GUNNING)
_____)

FINAL ORDER

On April 1, 1999, the hearing officer for the Idaho Department of Water Resources (the "Department") issued a Recommended Order in the above captioned matter. None of the parties filed a petition for reconsideration, briefs, or exceptions to the Recommended Order. Based on his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order.

FINDINGS OF FACT

1. On December 4, 1997, the Snake River Basin Adjudication ("SRBA") Court issued a partial decree for water right no. 36-02457 as follows:

Source:	Groundwater
Priority:	September 29, 1961
Rate of diversion:	1.0 cubic foot per second ("cfs")
Point of diversion:	NE1/4 NE1/4 SE1/4 ¹ Section 21, T7S, R16E, Jerome County
Purpose of Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	118 acres within a 222-acre permissible place of use in parts of Sections 21 and 22, T7S, R16E, Jerome County

Other Limitations: Use of this right with right no. 36-07760 is limited to a total combined diversion rate of 3.3 cfs and a total combined annual diversion volume of 888 acre feet ("af").

Use of this right with right no. 36-07760 is limited to the irrigation of a combined total of 222 acres in a single irrigation season.

¹ The "1/4" designations will be omitted from subsequent legal descriptions in this order.

2. On December 4, 1997, the SRBA Court issued a partial decree for water right no. 36-07760 as follows:

Source:	Groundwater
Priority:	November 7, 1977
Rate of diversion:	2.3 cfs
Point of diversion:	NESE Section 21, T7S, R16E, Jerome County
Purpose of Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	221 acres within a 222-acre permissible place of use in parts of Sections 21 and 22, T7S, R16E, Jerome County

Other Limitations: Use of this right with right no. 36-02457 is limited to a total combined diversion rate of 3.3 cfs and a total combined annual diversion volume of 888 af.

Use of this right with water right no. 36-02457 is limited to a combined total of 222 acres in a single irrigation season.

3. On December 30, 1997, the Department issued water right license no. 36-08063A as follows:

Source:	Groundwater
Priority:	February 16, 1982
Rate of diversion:	2.14 cfs
Point of diversion:	NESE Section 21, T7S, R16E, Jerome County
Purpose of Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	107 acres within a 329-acre permissible place of use in parts of Sections 21 and 22, T7S, R16E, Jerome County

Other Limitations: Rights 36-02457, 36-07760, and 36-08063A when combined shall not exceed a total diversion rate of 3.3 cfs, a total annual diversion volume of 1107.9 af, and the irrigation of 329 acres.

4. On April 3, 1997, F. F. Gunning and G. C. Gunning² ("applicant") filed Application for Transfer No. 5197 ("application") with the Department seeking to change the nature of use for a total of 0.2 cfs and 55.3 af from parts of three irrigation water rights (36-02457, 36-07760 and 36-08063A) to stockwater and commercial uses at an existing dairy known as Hillcrest Dairy. Hillcrest Dairy is located within the E1/2NE Section 34, T7S, R15E, Gooding

² The Department has been informed that subsequent to the application for transfer and hearing, G. C. Gunning passed away. However, no documentation or Notice of Change of Water Right Ownership have been submitted to the Department.

County, approximately six miles west of the original irrigation use within Section 21, T7S, R16E, Jerome County.

5. The Department published notice of the application, and the application was subsequently protested by the following parties ("protestants"):

City of Wendell
Wendell Recreation District
John and Verla Hall
Noel Briggs
Frank Rost, Jr.

6. On December 10, 1998, the Department conducted a hearing in the matter. The applicant was present and was represented by Patrick D. Brown. The City of Wendell was represented by Craig D. Hobdey. Protestant Frank Rost, Jr. was present and represented himself. Bud Bitterly appeared for the Wendell Recreation District, but chose not to participate as a full party in the hearing. Protestants Noel Briggs and John and Vera Hall did not appear.

7. Issues identified by the protestants include the following:

- a. The proposed changes will injure the rights of the protestants.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

8. Exhibits premarked, offered, or accepted as a part of the record include the following:

- a. Applicant's Exhibit 1 - NOT OFFERED
- b. Applicant's Exhibit 2 - NOT OFFERED
- c. Applicant's Exhibit 3 - NOT OFFERED
- d. Applicant's Exhibit 4 - NOT OFFERED
- e. Applicant's Exhibit 5 - NOT OFFERED
- f. Applicant's Exhibit 6 - Statement of G. C. Gunning
- g. Applicant's Exhibit 7 - NOT OFFERED

- h. Applicant's Exhibit 8 - Copy of part of a 7.5 minute U.S. Geological Survey Quadrangle sheet titled "Wendell, Idaho"
- i. Applicant's Exhibit 9 - Notice of Claim to a Water Right - Identification No. A36-07440, Partial Decree for Water Right 36-07722, Partial Decree for Water Right 36-11276, Partial Decree for Water Right 36-11277, Well Driller's Reports (4), Water Measurement Reports (10)
- j. Applicant's Exhibit 10 - Letter dated December 1, 1998 to Pat Brown from Charles E. Brockway together with a well interference analysis and water requirement analysis
- k. Applicant's Exhibit 11 - Order of Partial Decree for Water Right 36-10815 dated March 2, 1998
- l. Applicant's Exhibit 12 - Order of Partial Decree for Water Right 36-15511 dated July 20, 1998
- m. Applicant's Exhibit 13 - NOT OFFERED
- n. Applicant's Exhibit 14 - NOT OFFERED
- o. Applicant's Exhibit 15
 - Order in Case No. 21610 titled James D. Nafziger et al. v. Gooding County et al. dated October 15, 1991
 - Judgment in Case No. 21610 titled James D. Nafziger et al. v. Gooding County et al. dated November 8, 1991
 - Memorandum Opinion & Order Re Defendant's Motion to Dismiss & Plaintiff's Motion For Summary Judgment in Case No. 22808 titled Pieter Deelstra et al. v. Board of Gooding County Commissioners of Gooding County, Idaho dated July 27, 1994
 - Second Amended Order Granting Plaintiffs' Motion for Summary Judgment in Case No. CV 96-00368 titled Pieter Deelstra et al. v. Gooding County et al. dated August 27, 1996
 - Amended Order in Case No. CV 96-00368 titled Pieter Deelstra et al. v. Gooding County et al. dated March 27, 1997
 - Opinion and Order in Case No. CV 97-430 titled Idaho Dairymen's Association, Inc., et al. v. Win Henslee, et al. dated June 17, 1998

- p. Applicant's Exhibit 16 - Partial Decree for Water Right 36-02457 in the name of Tammy D. and Richard B. Van Dyk
- q. Applicant's Exhibit 17 - Partial Decree for Water Right 36-07760 in the name of Tammy D. and Richard B. Van Dyk
- r. Applicant's Exhibit 18 - Water Right License No. 36-08063A in the name of F. F. Gunning and G. C. Gunning
- s. Applicant's Exhibit 19 - Affidavit of Gail Gunning
- t. Protestant's Exhibit A - Findings of Fact and Conclusions Before the Gooding County Planning and Zoning Commission dated March 26, 1998

9. The reported capacity of the Hillcrest Dairy is 1,050 milking cows and 150 non-milking cows. A partial decree in connection with SRBA Claim No. 36-15511 provides water for 400 of the milking cows at the dairy. The application seeks water for the remaining 650 milking cows and 150 non-milking cows (remaining uses). The applicant needs a maximum diversion volume of approximately 56 af of water for the remaining uses at the Hillcrest Dairy to be diverted at a maximum rate of 0.2 cfs. The consumptive use volume of water needed for the remaining dairy uses is approximately 20 af.

10. The water sought for transfer in the application was either withheld from land sold by the applicant to Richard B. and Tammy D. Van Dyk or sold back to the applicant. The land from which water was withheld or sold is more specifically described as follows:

Section 22, T7S, R16E, Jerome County

NESW - 2 acres
NWSW - 8 acres
SWSW - 4 acres

The land from which water was withheld or sold consists of corners that are no longer irrigated by the pivot on the quarter section.

11. A dairy existed at the Hillcrest Dairy site from 1962 to 1987, when the dairy ceased operation due to a federally sponsored dairy buy-out program. From 1991 to 1994, a calf feeding operation for up to 4,500 calves was conducted on the site.

12. On March 2, 1995, the applicant bought the Hillcrest Dairy site. The applicant began to enlarge the facility and reestablish the dairy. The facility enlargement was contested by the City of Wendell, which contended that the site was within the city's impact area and that zoning for the site required certain permits the Gunnings did not have. This zoning issue has been litigated in several cases between Gooding County and various dairy interests.

13. There are approximately 10,000 milking cows within a two-mile radius of Wendell. Most of the dairies are on the west side of town.

14. Overall, the local community generally supports the dairy industry, since the industry creates jobs and contributes to the general economy.

15. The efficiency of the use of water at the Hillcrest Dairy is comparable to other dairies in the area.

16. The Board of Gooding County Commissioners enacted Gooding County Ordinance 62 on February 10, 1997. Among other purposes, the ordinance defines "Confined Animal Feeding Operations" ("CAFOs"), addresses existing CAFOs, provides criteria and procedures for "siting permits", and sets forth criteria for "occupancy certificates."

17. In Civil Case No. CV 97-430, titled Idaho Dairymen's Association Inc., et al. v. Win Henslee, et al., on June 17, 1998, (see Applicant's Exhibit 15), the Fifth Judicial District Court held that Ordinance 62 is invalid in its entirety. This ruling is presently on appeal and cross-appeal.

18. At the hearing, the applicant and protestants stipulated that the matter of zoning was presently on appeal and should not be argued in the Department's administrative hearing on the protested application for transfer, since the Department does not have the authority to decide zoning issues.

19. The field headgate diversion requirement for the irrigation of crops in the vicinity of the Hillcrest Dairy and the Van Dyk property is 4.0 af per acre, and the consumptive irrigation requirement is 3.0 af per acre. The annual field headgate diversion requirement for the irrigation of 14 acres at 4 af per acre is 56 af, and the annual consumptive irrigation requirement for irrigation at 3 af per acre is 42 acre feet.

20. The applicant's expert witness provided testimony that the diversion rate of 0.20 cfs proposed in the application would not be measurable in any wells owned by the City of Wendell or the other protestants.

21. The applicant owns approximately 80 shares of water in the North Side Canal Company, is willing to retain ownership of the shares, and will make the shares available for mitigation or a recharge program to benefit the general area if such a program is established.

22. The City of Wendell alleged that the quality of life in Wendell has decreased due to odors and flies attributable to the Hillcrest Dairy. The city also contended, without supporting evidence, that odor of water from a well owned by the city was attributable to the dairy.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. IDAPA 37.03.08045.01.e.iii (Water Appropriation Rule 45.01.e.iii) provides in pertinent part as follows:

e. Criteria for determining whether the project conflicts with the local public interest. The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:

iii. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use, and that it will be consistent with principles of conservation of water resources within the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest about which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The changes proposed in the application will not injure other water rights.

7. The proposed changes do not constitute an enlargement in use of the original right since transfer of the rights for the uses sought in the application do not increase the total rate of diversion, annual volume diverted, or annual volume consumptively used.

8. The proposed changes are in the local public interest provided the applicant complies with planning and zoning ordinances of local government jurisdictions and the environmental requirements of state agencies.

9. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

10. The Department should approve the application with certain conditions and limitations.

ORDER

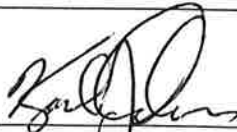
IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5197 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
2. The dairy operation authorized under this approval shall comply with applicable city and county zoning and use requirements.
3. Two points of diversion are located within NENE Section 34, T7S, R15E, Gooding County.
4. The total instantaneous diversion of water from the points of diversion under Transfer 5197 shall not exceed 0.2 cfs nor a total annual combined volume of 56 af.
5. Prior to diversion and use of water under this approval, the right holder shall install and maintain a measuring device on each diversion associated with the dairy and shall annually report the amount of water diverted to the Department.
6. Wastewater from the commercial use authorized under this approval may be applied to irrigated land to satisfy water quality requirements. However, wastewater may only be applied to the lands identified on the transfer, and water shall not be land applied for irrigation use unless it has first been beneficially used in the dairy operation in accordance with this transfer approval.
7. The right holder shall maintain ownership and control of 80 shares of water in the North Side Canal Company for mitigation purposes and shall comply with the terms of mitigation as the Department may determine the terms in the future.
8. The acres which are no longer authorized for irrigation under right nos. 36-02457A, 36-07760A, and 36-08063E are described as follows: 2 acres in NESW, 8 acres in NWSW, and 4 acres in SWSW Section 22, T7S, R16E, Jerome County

9. The remainder of right no. 36-02457 is identified as right no. 36-02457A and is limited to a diversion rate of 0.91 cfs and an annual diversion volume of 386.3 af for the irrigation of 108.6 acres each year within a 212.6-acre permissible place of use.
10. The remainder of right no. 36-07760 is identified as right no. 36-07760A and is limited to a diversion rate of 2.19 cfs and an annual diversion volume of 464.1 af for the irrigation of 211.6 acres each year within a 212.6-acre permissible place of use.
11. The remainder of right no. 36-08063A is identified as right no. 36-08063E and is limited to a diversion rate of 2.05 cfs and an annual diversion volume of 409.6 af for the irrigation of 102.4 acres each year within a 315-acre permissible place of use.
12. Use of rights no. 36-02457A and 36-07760A when combined is limited to the irrigation of a combined total of 212.6 acres in a single irrigation season.
13. Use of rights no. 36-02457A, 36-07760A, and 36-08063E when combined is limited to a total combined diversion rate of 3.10 cfs and a total combined diversion volume of 1,051.9 af for irrigating a combined total of 315 acres in a single irrigation season.
14. The change authorized by this approval shall be accomplished within one (1) year of the date of this order.
15. Failure of the right holder to comply with any condition of approval of this transfer is cause for the Director to rescind approval of the transfer.

IT IS FURTHER hereby ORDERED that the protests of Noel Briggs and John and Vera Hall be **SET ASIDE** for failure to appear at the scheduled hearing.

Signed this 20th day of September, 1999.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 21st day of September, 1999, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F F GUNNING
G C GUNNING
PO BOX 716
WENDELL ID 83355

PATRICK D BROWN
PARKER WARR AND BROWN
812 SHOSHONE ST E
TWIN FALLS ID 83301

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

DALE BITTERLI
PRESIDENT WENDELL REC DIST
PO BOX 217
WENDELL ID 83355

JOHN AND VERLA HALL
1988 E 2800 S
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE E
WENDELL ID 83355


JULIE L. YARBROUGH

Senior Secretary, Water Allocation Bureau